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In the Supreme Court of the United States

OCTOBER TERM, 1998

JAMES E. PIETRANGELO, II, PETITIONER,

v.

UNITED STATES SENATE, ET AL., RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS UNITED STATES SENATE, ET AL. IN OPPOSITION TO THE PETITION FOR CERTIORARI

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MAY 1999.

QUESTIONS PRESENTED

1. Whether the district court properly applied the Speech or Debate Clause (art. I, sec. 6, cl. 1) to dismiss this action, which seeks to question the Senate and its Members about their votes in President Clinton's impeachment trial.

2. Whether plaintiff's lack of Article III standing and the constitutional commitment to the Senate of the sole power to try impeachments (art. I, sec. 3, cl. 6) also bar this action challenging the Senate's acquittal of President Clinton.

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Respondents United States Senate and all Members of the Senate submit this brief in opposition to the petition for a writ of certiorari before judgment filed by petitioner James E. Pietrangelo, II.

STATEMENT OF THE CASE

This petition arises out of a complaint filed in the United States District Court for the Northern District of Ohio on February 10, 1999, while the Senate, pursuant to Article I, Section 3, Clause 6 of the Constitution, was trying the impeachment of President Clinton. The complaint sought declaratory and injunctive relief concerning the Senate's conduct of the impeachment trial. After the Senate acquitted the President and adjourned the trial on February 12, 1999, the plaintiff amended his complaint on March 4, 1999, to add all Senators as defendants and to challenge particular Senators' votes on the two articles of impeachment.

Specifically, the plaintiff alleged that at least thirty-two Senators who voted "not guilty" nevertheless demonstrably believed, as evidenced principally by their support of a resolution of censure, that the President in fact had committed the offenses charged by the House of Representatives in the articles of impeachment. Amended Complaint at 4. On this basis the plaintiff sought a declaratory judgment that the Senate had "actually convicted" President Clinton. *Id.* at 8. The plaintiff predicated his standing on assertions that the Senate's acquittal of the President had deprived the plaintiff of his rights, as a citizen, to the "rule of law, equal protection and justice, due process, and democracy." *Id.* at 6, 7, 8.

Acting *sua sponte*, the district court dismissed the amended complaint on March 17, 1999, on the basis that the Constitution's Speech or Debate Clause, Article I, Section 6, Clause 1, affords Members of Congress absolute immunity for their votes. App. to Cert. Petition at 2. The plaintiff noticed his appeal to the United States Court of Appeals for the Sixth Circuit on March 26, 1999, and filed his opening brief in the court of appeals on April 19, 1999. This petition for certiorari before judgment followed on May 3, 1999. Respondents' brief in the court of appeals is due May 26, 1999.

REASONS FOR DENYING THE WRIT

The petition for a writ of certiorari before judgment should be denied because it fails to show "that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court." Sup. Ct. Rule 11. Here, the court of appeals remains the appropriate and efficient forum for appellate review of the district court's straightforward and inescapable judgment that the Speech or Debate Clause provided an absolute bar to this lawsuit. Had the Speech or Debate Clause not provided a basis for the district court to dismiss this action *sua sponte*, principles of both Article III standing and the political question doctrine would also have prohibited

reaching petitioner's claims. The clear application of these settled legal principles to this case means that it would not present any "compelling reason" for even a post-judgment grant of certiorari under Rule 10. *A fortiori*, this case does not amount to that exceptionally rare occurrence in which the Court should review a case still pending in the court of appeals in order to resolve an issue of great constitutional significance. *E.g., Mistretta v. United States*, 488 U.S. 361, 371 & n.6 (1989) (addressing constitutionality of Federal Sentencing Commission to rectify "disarray" in lower court decisions).

I. The Speech or Debate Clause provides: "for any Speech or Debate in either House, [Senators and Representatives] shall not be questioned in any other Place." U.S. Const. art. 1, § 6, cl. 1. This Clause provides an absolute protection against judicial inquiry into "'the deliberative and communicative processes . . . with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.'" *Eastland v. United States Servicemen's Fund*, 421 U.S. 491, 504 (1975) (quoting *United States v. Gravel*, 408 U.S. 606, 625 (1972)). The Court has specifically held that the Clause prohibits lawsuits against Members for their acts of voting on matters pending before the Senate. *See Gravel*, 408 U.S. at 624; *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1881).

The amended complaint alleges that thirty-two Senators violated their constitutional oath when they voted "not guilty" on each of the two articles of impeachment then pending before the Senate. This claim patently seeks to question Members of the Senate about their votes in exercising their exclusive constitutional duty "to try all Impeachments." U.S. Const. art. 1, § 3, cl. 6. Accordingly, the district court properly dismissed this case, because the Speech or Debate Clause "'extends absolute immunity to members of Congress for voting'"on a matter that the Constitution places before the Senate. App. to Cert.

Petition at 2 (quoting *McSurely v. McClellan*, 753 F.2d 88, 105 (D.C. Cir. 1985)).

II. The district court properly proceeded immediately to the applicability of the Speech or Debate Clause because the Clause protects Members "not only from the consequences of litigation's results but also from the burden of defending themselves." *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967) (per curiam); *see Eastland v. United States Servicemen's Fund*, 421 U.S. at 511 n.17. Had the Speech or Debate Clause not provided respondents with an absolute immunity, both principles of Article III standing and the political question doctrine would have independently precluded this action.

On its face, petitioner's asserted injury (that respondents deprived him of his rights as a citizen to the "rule of law, equal protection and justice, due process, and democracy," Amended Complaint at 6, 7, 8) is a prototypical example of a "generalized grievance[] about the conduct of government" that fails to satisfy the requirements of Article III. *Flast v. Cohen*, 392 U.S. 83, 106 (1968); *see Allen v. Wright*, 468 U.S. 737, 751, 753–56 (1984); *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Petitioner's concerns about harm "to this Nation," Cert. Petition at 3, and "restoring our democratic way of life," *id.* at 5, amount to no more than allegations of "abstract injury in nonobservance of the Constitution." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 220–27 & n.13 (1974). The district court therefore lacked Article III jurisdiction over the complaint.

Further, petitioner's request for judicial review of Senators' votes in an impeachment trial presents a nonjusticiable political question, given the Constitution's "textually demonstrable constitutional commitment," *Baker v. Carr*, 369 U.S. 186, 217 (1962), to the Senate of the "sole Power to try all Impeachments," U.S. Const. art. 1, § 3, cl. 6. *See Nixon v. United States*, 506 U.S. 224 (1993).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari before judgment should be denied.

Respectfully submitted,

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